IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4767 OF 2004
IN
CRIMINAL APPEAL NO.524 OF 2004

Tatyasaheb Limbraj Patil ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. A.P.Mhatre for Applicant
Ms. P.H. Kantharia A.P.P. for the State

CORAM: B.H.MARLAPALLE & ROSHAN DALVI, JJ.
DATED: 12TH JANUARY, 2006

P.C.

1. Heard Mr. Mhatre learned counsel for the applicant who has been convicted and sentenced by the learned 5th Additional Sessions Judge, Solapur in Sessions Case No.180 of 2003 for the offences punishable under Sections 302, 201 and 498-A of the Indian Penal Code. The Criminal Appeal No.524 of 2004 filed by the Applicant has already been admitted by this Court on 27th April 2004 and therefore, this bail application.

2. The learned Additional Sessions Judge held that the death of Applicant's wife Reshma @ Renuka was homicidal and the Applicant was guilty of committing her murder intentionally on 26th April 2003 at about 6.30 a.m. while they were residing together. The Sessions Court also accepted the prosecution case that

the deceased was subjected to cruelty and harassment on account of demand of Rs.1 lakh for assistance to carry out the contractors' business in which the Applicant was engaged. The applicant was also guilty of screening the evidence by setting the deadbody of Reshma on fire by sprinkling kerosene on her person and intentionally he gave false information to Police that she met with an accidental death.

3. The learned Counsel for the Applicant referred to the oral evidence of the Medical Officer Dr. Namdev Patil, who had conducted the post-mortem and submitted P.M. Notes at Exhibit-18. In his cross examination he admitted that he did not carry out the hystopathology test which was required to be carried out to ascertain whether the fracture was ante-mortem or post-mortem. In addition he also referred to the depositions of two defence witnesses namely Bhimrao Nandvate (P.W.-1) and Muzaffarali Patel (P.W.-2) in support of his defence that the death was accidental.

4. Admittedly the Applicant's house consists of a room admeasuring 10 x 12 ft. attached with the kitchen and in the said house apart from the Applicant and his deceased wife none else was staying. He had approached the Police Station on the date of the incident i.e. on 26th April 2003 after 10.30 a.m. stating that his wife Reshma died because of accidental fire of the kerosene stove. This plea has

no doubt been supported by the defence witnesses and the learned Sessions Judge has rejected the said defence.

5. Spot Panchanama Exhibit-23 bellies the theory of accidental death of Reshma and in addition, the evidence of the Medical Officer, in his examination-in-chief, which went unimpeached, is required to be considered, prima facie, for deciding this bail application.

6. We reproduce the following statement made by the Medical Officer in his Examination-in-chief.

> "(a). Swelling infront of neck, size 6x4 cm.
> (b). 100% burns
> (c). On examination of base of tongue bruising present.
> (d). On palpation fracture of hyoid bone present.
>
> . Injuries (a), (c) and (d) are definitely ante-mortem meaning before death. Injury (b) is post-mortem meaning after death. Scalp was burnt. Skull was intact. Brain and its coverings were congested. Valves and ribs and cartilages were burnt. Pleura was congested. In front of larynx fracture of hyoid bone was seen. Right and left lungs

were congested. Pericardium was intact. Right chamber of heart was full of blood. Left chamber was empty. Walls of abdomen were burnt. Peritoneum was congested. Tongue was protruded in between teeth. Oesophagus was congested. Stomach was congested and empty....."

7. The learned Sessions Judge therefore accepted that the deceased was first killed and then set on fire to screen the evidence.

8. The Applicant made out a specific defence of accidental death of his wife but the same has not been accepted by the Sessions Court on the face of the Medical Evidence. The other circumstantial evidence also does not permit us to allow this application by suspending the sentence under Section 389 of Cr.P.C.

9. The Application is, therefore, rejected.

(ROSHAN DALVI, J.) (B.H.MARLAPALLE, J.)